IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16363 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

NIRMALABEN @ NIRUBEN DURGAPRA-SAD KAHAR - Petitioner(s)

Versus

COMMISSIONER OF POLICE OF THE CITY OF VADODARA & 2 - Respondent(s)

==========

Appearance :
MS BANNA S DUTTA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
Mrs.Hansa Punani ld. AGP for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 19/09/2005

ORAL JUDGMENT

1. The order of detention dated 16.07.2005 passed by the Police Commissioner, Vadodara City, has been challenged by the detenue that exercised of powers under Subsection 2 of Section 3 of the Gujarat Prevention of Antisocial Activities Act (for short, 'the PASA Act'), 1985 in detaining the detenue as “Bootlegger” as defined under Section 2(b) of the Act is violative of Article 14,21, 22, 22(1) and 22 (5) of the Constitution of India.

2. Alongwith the order of detention dated 16.07.2005, the grounds, on which the order of detention was passed , were supplied to the detenue as per requirement of Subsection 1 of Section 9 of the Act. The grounds reflect

registration of two offences registered vide different crime registered numbers at Ravpura Police Station for the offences punishable under the provisions of Bombay Prohibition Act. According to the Detaining Authority, he indulges into illegally supply of foreign liquor and the said activities result into disturbance of public order and general health of public. That even it is not possible for the concerned authority to take recourse of the provision under Section 93 of the Prohibition Act or even in proceedings under Section 57 of the Bombay Police Act, 1951 and, therefore, the remedies under ordinary law are not sufficient and, therefore, powers under the Act are exercised so as to prevent the detenue from indulging into such prejudicial antisocial and criminal activities.

3. The learned advocate for the detenue has submitted that the alleged antisocial

activities cannot be said to have bearing on the maintenance of the public order or the general health of the public and simply crimes are registered under Bombay Prohibition Act, cannot form a relevant material for arriving at the subjective satisfaction by the Detaining Authority that though the petitioner is a Bootlegger, required to be detained under the provisions of the Act.

4. Mrs. Hansha B. Punani, learned Assistant Government Pleader has tried to support the order of detention but could not make out a ground to sustain the order of detention.

5. Considering the facts and rival submissions and on perusal of the records of the case including the affidavit in reply filed by the detaining authority, I am inclined to accept the submissions of learned advocate for the detenue that registration of crimes for the

offences punishable under the Bombay Prohibition Act, 1949 by itself cannot said to have bearing or nexus on the disturbance of the public order or the general health of the public and, therefore, the decision reported in the case of **Darpan Kumar Sharma Vs. State of T.N.,** reported in 2003 (2) SCC 313 is applicable in the facts of the present case particularly para-5 which reads as under:-

> “5. The basis upon which the petitioner has been detained in the instant case is that he robbed one Kumar at the point of knife a sum of Rs.1,000. Any disorderly behaviour of a person in the public or commission of a criminal offence is bound to some extent, affect the peace prevailing in the locality and it may also affect law and order, but the same need not affect maintenance of public order. Under the definitions in the Act,

it is stated that in the case of “goonda” the acts prejudicial to public order are “when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order”

The important question considered by the Supreme Court “ whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order” is very well explained in the decision reported in 2000 (4) GLR 3623 in the case of **Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and Ors.** as under:-

“ Even an activity violating an ordinary legal provision may in a given case be a matter of public order. It is the

magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of society that determines whether the activities can be said to be prejudicial to the maintenance of public order or the same amounted to breach of law and order. The fall-out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society."

6. The above circumstances and the judgments are clearly applicable in the present case and, therefore, the order of detention is to be quashed and set aside as the same is unjust, unconstitutional, illegal and violative of Article 21 and 22 of the Constitution of India.

That another case of disturbance of public order by prejudicial activities of the detenue is considered by the Division Bench in the decision reported in L.P.A. 223 OF 2000 in Special Civil Application No.554 of 2000 wherein in Para- 5 of the said judgment, law laid down by the Apex Court in case of **K.S.Zala Vs State of Gujarat** is discussed is as under:-

> "5:- If we examine the present case on the anvil of the test which has been applied by the Supreme Court in the case of K.S.Zala Vs. State of Gujarat (Supra), i.e. with regard to the presence of credible material and as to how the detaining authority has made the mention against the appellant being an obstruction to the public health and public order, we find that in the instant case so far as the statements of the witnesses which were recorded with regard to unregistered cases, that ground has been rejected by the learned Single Judge himself. It is , of course, true that after narrating the authority has mentioned that the activities of the appellant were an obstacle to the public health and public order, but this bald observation cannot be taken to be decisive so as to arrive at the satisfaction that the activities of

the petitioner were prejudicial to the public order or public health and that tempo of public life was disturbed. No observation made in any part of the judgment can be read in isolation and bereft the context. The judgment is to be read as a whole and even the observations which have been made by the Supreme Court in para 6 of the judgment are to be considered in light of the earlier observations made in para 5 where presence of credible material before the detaining authority has been insisted upon. Thus, litmus test to find out as to whether it is a case of breach of public order, material has to be there. In the case of K.S.Zala before the Supreme Court, the detaining authority had also relied upon the statements of the witnesses so as to show that violence resorted to by the petitioner in that case had disturbed the even tempo of public life and the material on record had shown that members of the public of those localities had to run away from there and to go inside their houses and to close their houses and to close their doors. No such fact situation has been mentioned in the present case and the ground with regard to the statements of the three witnesses has been rejected by the learned Single Judge himself and it has been held that there had been violation or infringement of the petitioner's right against such statements. In this view of the matter unregistered cases and with regard to the three incidents the material germane for the purpose of consideration of the

> threat to the public health and public order. Thus, the only material which remains is the registered criminal cases and that by itself cannot be said to be a material for the purpose of holding that the appellant's activities had become a threat to the public order and public health. Necessary material in this regard is totally wanting in the body of the detention order itself. In large number of cases, the Supreme Court has considered that involvement in bootlegging activities even if coupled with violence does not amount to threat to public order or public health. The mere mention of allegations unless they are supported by any material cannot be said to be material germane for the purpose of arriving at the satisfaction with regard to breach of public order or public health and we find that after giving particulars of criminal cases, the detaining authority by including certain allegations, not supported by any credible material has simply observed that the appellant's activities were on obstacle to the public health and public order. In this view of the matter keeping in view the observations made by the Supreme Court in the case of K.S.Zala Vs. State of Gujarat (Supra) itself in paras 4 and 5, we do not find that it can be held to be a case of breach of public health and public order."

In view of the above position of law, in the present case offences registered under

the Prohibition Act against the petitioner and the petitioner is enlarged on bail. Apart from the said offence registered with Ravpura Police Station under the provisions of Bombay Prohibition Act, no relevant or credible materials exist against the detenue simply the registration of the crime or even seizure of I.M.F.L. cannot disturb the public order or the general health of the public. This is a case where remedy under ordinary law is sufficient. This can be a case at the most of maintenance of law and order and not the disturbance of the public order or the general health of the public. In these circumstances the subjective satisfaction of the detaining authority that registration of crimes against the detenue under the Bombay Prohibition Act cause disturbance to the public order or the general health of the public is not based on any relevant or credible materials which may

lead to the conclusion that such activities of the detenue are prejudicial to the maintenance of the public order or the general health of the public. Even the magnitude or the gravity of the offence, devoid of any other consequential effect on public order disturbing the even tempo of social and normal life of the people at large, cannot be said to be justified for invoking the powers as exercised by the Detaining authority under the provisions of the PASA Act.

7. In view of the above decisions of the Apex Court and this Court, in the facts of this case also simply registration of offences under Bombay Prohibition Act, 1949 against the detenue, by itself can not have bearing on public order or health of the public and gravity of magnitude of these offences are not of such a nature, which may disturb even

tempo of normal public life.

8. For the reasons recorded above, the order of detention dated 16.07.2005 passed by the respondent no.1, is quashed and set aside and the detenue Nirmalaben @ Niruben Durgapra-sad Kahar is ordered to be set at liberty forthwith if not required in any other offence by any other authority.

9. Rule is made absolute accordingly. Direct Service is permitted.

(ANANT S. DAVE, J.)

amit